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RESPONSE TO THE DEPARTMENT FOR TRANSPORT “CONSULTATION ON EUROPEAN PROPOSAL FOR A DIRECTIVE ON LABELLING OF TYRES WITH RESPECT TO FUEL EFFICIENCY AND OTHER ESSENTIAL PARAMETERS”

The Advertising Association is the only body representing all sides of the advertising and promotional marketing industries, worth £18.6 billion in 2008. Its membership represents advertisers, agencies, media and support services in the UK. Further information about the organisation is available at: <http://www.adassoc.org.uk/>

1. Introduction & Summary

1.1. The Advertising Association responds here to the consultation by the Department for Transport (DfT) on the proposal published in November 2008 by the European Commission (EC) for a Directive “on labelling of tyres with respect to fuel efficiency and other essential parameters”. The overall objective of the EC proposal is to improve the fuel efficiency of vehicles as a consequence of consumers deciding to purchase tyres with lower rolling-resistance, thereby achieving key environmental targets such as the reduction of CO₂ emissions. The EC envisages achieving this objective through enhanced information provision via labelling. It is intended that the legislative proposal would apply to tyres for light, medium and heavy commercial vehicles, cars, coaches and buses, as well as trailers¹. In addition to information about the performance of tyres in respect of rolling-resistance, two other parameters – noise and wet grip (where applicable) – would also be provided on-label.

1.2. The principal objective of the DfT consultation is to inform the negotiating position of the UK Government on this proposal ahead of the three-way discussions between the EC, European Parliament (EP) and the Council of Ministers, scheduled for September 2009. Thus, it is seen fit in this response to take account not only of the contents of the DfT consultation and the original EC proposal for a Directive, but also the amendments proposed by the EP (April 2009) and the amended EC proposal for a Regulation (July 2009).

1.3. It is envisaged that the labelling information about rolling-resistance, noise and wet grip would be provided to consumers via: stickers on the tyres themselves; at the point-of-sale (such as in showrooms); and, in ‘technical promotional literature’. This response is primarily concerned with the way in which ‘technical promotional literature’ is defined.

1.4. In summary, the Advertising Association:

- (a) sets out the importance of ensuring that any definition of ‘technical promotional literature’ minimises uncertainty of interpretation as to the scope of the term and makes proposals for how that goal can be achieved; and
- (b) shares the view of the DfT that point-of-sale is the juncture in the decision-making process when consumers are most receptive to the provision of technical data.

¹ Paragraph 2 of Article 2 (“Scope”) excludes from the legislative measure being proposed seven types of tyre, including those that have been re-treaded and those for off-road professional use.

1.5. The Advertising Association looks forward to publication by DfT of a summary of the submissions it receives to this consultation exercise in due course alongside the Government response. No part of this response should be treated as if it were confidential.

2. The problem with the current definition(s) of “technical promotional literature”

2.1. In its consultation the DfT states that amendments are required to the draft legislation if greater clarity is to be achieved ahead of implementation. Failure to address issues of clarity would create burdens (such as tyre suppliers having to seek external legal advice as to interpretation) and certainly runs counter to the spirit of better regulation.

2.2. One area of imprecision is the definition of ‘technical promotional literature’ contained within draft Article 3(4). The term ‘technical promotional literature’ must be clearly defined, given that duties in respect of such material are placed on businesses via Article 4 (“Responsibilities of tyre suppliers”) and Article 6 (“Responsibilities of car suppliers and car distributors”)² to publish information in the format specified by Annex III (“Information provided in technical promotional literature”). Recitals 16 and 17 of the original proposal also make reference to ‘technical promotional literature’ as does an important new Recital – 18 - inserted into the July 2009 version of the draft legislative proposal.

2.3. The latest EC proposal also points to the need to achieve even greater clarity, as the Commission has taken up the proposal of the EP that the law governing tyre labelling should take the form of a Regulation rather than a Directive. This will mean that Member States will not have an opportunity to clarify domestically the meaning of terms in any Regulation.

2.4. The lack of clarity stems from use of as broad a term as “internet marketing” within all those definitions of ‘technical promotional literature’ that have emerged from the EC and EP to date, even though it is clear (see section 3 of this response) what those institutions are attempting to encapsulate. The vagueness of “internet marketing” is also in stark contrast to the clarity of those forms of promotional literature that precede it in the definition contained within Article 3(4), these being “technical manuals, brochures, leaflets and catalogues either printed or in electronic form”. It is notable in this context that the EC proposes ignoring a potentially useful amendment adopted by the EP that would have explicitly excluded “media advertising” from the definition of ‘technical promotional literature’ - the Commission citing a lack of clarity and the absence of a definition of the term, yet precisely the same criticisms could be levelled at “internet marketing”. The EP’s objective in adopting this amendment was undoubtedly to achieve greater clarity as to the intended scope of Article 3(4).

2.5. Interestingly the DfT does not use the term ‘technical promotional literature’ once in its consultation or in any of the Departmental material published alongside it. Instead the DfT uses accurate examples of ‘technical promotional literature’, but also imprecise terms. Examples on this spectrum run from “printed and electronic catalogues”³ through to “advertising materials”⁴. Whilst the former would absolutely be within scope, the latter risks capturing activities that go beyond what could possibly be considered ‘technical promotional literature’. This variation is symptomatic of the worrying level of imprecision inherent in those official European definitions of ‘technical promotional literature’ arrived at to date.

3. Proposal for a revised definition of ‘technical promotional literature’

3.1. Having identified the problem with the term “internet marketing”, it is necessary to advance a suitable alternative. It is clear from the material published both by the EC and the

² The EC proposes Article 6 be re-titled “Responsibilities of vehicle suppliers and vehicle distributors”.

³ DfT Consultation Document (pages 3, 7 and 12)

⁴ DfT Impact Assessment, Section 3.5.2 (page 7)

DfT that what this term is intended to capture are those websites that describe the specific parameters of tyres. Such websites are the online and direct qualitative equivalent (be they printed or electronic) of technical manuals, brochures, leaflets and catalogues.

3.2. The evidence for DfT understanding this to be the intent is contained within the wording of Question 6 of its consultation (see section 4 of this response) where the Department cites catalogues and websites as examples of where the information requirements foreseen by the draft European legislation should appear.

3.3. The evidence for the EC intending this is provided by Recital 18, which the Commission proposed in July be added to the legislative measure. The Recital is extremely helpful in defining the scope of the measure - it states: "Potential end-users should be provided with information explaining each component of the label and its relevance. This information should be provided in technical promotional literature such as suppliers' websites."

3.4. The same degree of specificity should be brought to Article 3(4) of the latest EC version of the draft legislative measure. Article 3(4) would require slight expansion if it is accurately to reflect the duties placed by Articles 4 and 6 on suppliers of tyres and vehicles as well as distributors of the latter. Consequently it is recommended that the term "internet marketing" be replaced by "the websites of tyre and vehicle suppliers and vehicle distributors".

3.5. The definition of 'technical promotional literature' could also be rendered clearer if there is a reversion to use of the term "marketing" rather than "promotion" in the subordinate clause of Article 3(4). "Marketing" was the term used in the November 2008 version of the proposal and the European Parliament did not see fit to amend this in April 2009. If the proposal set out in paragraph 3.4 above is adopted repetition of the term "marketing" in the definition would not arise, whilst a circular definition whereby "promotion" describes what is meant by "promotional" would be avoided.

3.6. Provided in the box below is a revised (August 2009) definition of 'technical promotional literature', which reflects the proposals contained in paragraphs 3.4 and 3.5 above. It amends the latest (July 2009) EC version of Article 3(4). (Struck-through material represents deletions of EC text, whilst emboldened words represent the additions proposed by the Advertising Association.) The recommended definition of 'technical promotional literature' is reproduced in the Appendix together with the original (November 2008) and latest (July 2009) EC proposal together with that proposed by the EP (April 2009).

'technical promotional literature' means technical manuals, brochures, leaflets and catalogues either printed or in electronic form as well as ~~internet marketing~~ **the websites of tyre and vehicle suppliers and vehicle distributors**, used in the ~~promotion~~ **marketing** of tyres and vehicles and aimed at end-users or distributors which describes the specific parameters of a tyre;

4. Responses to Questions 6, 7 and 8

Question 6: Do you agree with the proposed requirements for information to be provided in catalogues, on websites, and with invoices?

4.1. Yes, the Advertising Association agrees with the proposed requirements contained within the draft European legislation for information to be provided in catalogues (be they printed or electronic form) and on websites, as well as with the final invoice⁵. (The necessity of the eventual legislation being clear, however, about where information requirements must be provided is advanced in section 2 of this response.)

⁵ Provision of the information in invoices is required by Article 5 ("Responsibilities of tyre distributors".)

4.2. Whilst invoices and ‘technical promotional literature’, such as catalogues and websites, may have a role to play in informing decision-making through the provision of relevant technical information to prospective customers, the Advertising Association would strongly endorse the DfT view that the labelling of the tyres themselves will be cost-effective. Like the DfT, the Advertising Association considers that the most effective locations for providing technical information will be on the adhesive labels actually placed on the tyres themselves and perhaps even more importantly - as the Department identifies⁶ - at the point-of-sale, given how it may help inform and assist sales staff in their direct communications with customers⁷. (This effect is likely to be particularly strong in respect of those classes of tyres that are ordinarily purchased in person by the owner of the vehicle.)

4.3. The DfT indicates elsewhere in its consultation that suggestions for alternative approaches to raising consumer awareness in this area would be welcome. One option may be for the DfT to incorporate the technical data on tyres within the highly regarded “Act on CO₂” website, which incorporates a calculator that consumers can use to quantify their own carbon footprint and is intended to help them choose between competing products on that basis. Given the acknowledged importance of price in this area of consumer decision-making⁸, it will be important to highlight the cost-savings that may accrue (through increased fuel efficiency) as a result of better informed choices of tyre being made. The DfT could draw the attention of consumers to the availability of such a new facility on its “Act on CO₂” website through its usual channels. (The Advertising Association would also endorse the DfT view about the importance of not overwhelming consumers with technical information⁹.)

Question 7: Do you think that the assessment of the effect of the regulations on competition and small businesses looks reasonable?

4.4. The effect of the proposed legislation on competition and small businesses would be rendered more reasonable if the DfT takes on board the comments made in section 3 above.

4.5. It is notable that in the Impact Assessment conducted by the DfT the only costs to industry that the Department identifies are those stemming from: the production of labels; the cost of applying them to each tyre; and, associated administrative costs. It is unclear whether the administrative costs here are taken to include those outlays associated with updating ‘technical promotional literature’. In any event, the costs will be higher if the proposed legislation creates legal uncertainty as to the scope of ‘technical promotional literature’, particularly if the term “internet marketing” remains within the definition.

4.6. In conclusion, the calculation arrived at by the DfT that costs will exceed benefits for the legislative package as a whole will be accentuated if a clearer definition of ‘technical promotional literature’ than that arrived at by the EC to date is not achieved.

Question 8: Do you foresee any unintended consequences of adopting this Regulation?

4.7. No unintended consequences of adopting the European legislation, whether it takes the form of a Directive or a Regulation, are foreseen if the DfT succeeds during the upcoming three-way negotiations in ensuring that a clear definition of ‘technical promotional literature’ is achieved.

7 August 2009

⁶ DfT Consultation Document (page 12)

⁷ DfT Consultation Document (page 11)

⁸ DfT Impact Assessment, Section 6.2.3 (page 11)

⁹ DfT Consultation Document (pages 9 and 18)

**Definition of ‘technical promotional literature’:
Recommended version (August 2009) and
evolution of the definition (November 2008 – July 2009)**

Recommended definition of ‘technical promotional literature’ (August 2009)

Article 3
Definitions

For the purpose of this Regulation:...

(4) ‘technical promotional literature’ means technical manuals, brochures, leaflets and catalogues either printed or in electronic form as well as the websites of tyre and vehicle suppliers and vehicle distributors, used in the marketing of tyres and vehicles and aimed at end-users or distributors which describes the specific parameters of a tyre;

Original EC definition of ‘technical promotional literature’ (19 November 2008)

Article 3
Definitions

For the purpose of this Directive...

(4) ‘technical promotional literature’ means all printed and electronic material used in the marketing of tyres or vehicles aimed at end-users or distributors which describes the specific parameters of a tyre, including technical manuals, brochures, Internet marketing, leaflets and catalogues;

Adopted EP definition of ‘technical promotional literature’ (21 April 2009)

Article 3
Definitions

For the purpose of this Directive:...

(4) ‘technical promotional literature’ means technical manuals, brochures, leaflets and catalogues, either printed, or in electronic form or published on the internet but excluding media advertising, used in the marketing of tyres or vehicles, aimed at end-users or distributors which describe the specific parameters of a tyre;

Revised EC definition of ‘technical promotional literature’ (14 July 2009)

Article 3
Definitions

For the purpose of this Regulation:...

(4) ‘technical promotional literature’ means technical manuals, brochures, leaflets and catalogues either printed or in electronic form as well as internet marketing, used in the promotion of tyres and vehicles and aimed at end-users or distributors which describes the specific parameters of a tyre;